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A REVIEW OF THE PROVISIONS RELATING TO YOUTH IN MISSOURI

EXECUTIVE SUMMARY

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MISSOURI **J**UVENILE **J**USTICE **R**EVUE **C**OMMITTEE

December 1981

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**A REVIEW OF THE PROVISIONS RELATING
TO YOUTH IN MISSOURI**

EXECUTIVE SUMMARY

Prepared by
Missouri Juvenile Justice Review Committee
December 1981

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INTRODUCTION

The confidential nature of juvenile records and proceedings pertaining particularly to those youth who are involved with the juvenile service system has provided a sense of privacy for some and has created a sense of concern and, sometimes, irritation for others. As part of its review of the juvenile service system in this State, the Missouri Juvenile Justice Review Committee (MJJRC) has determined that there is a very real need to address this issue.

PROBLEM STATEMENT

Missouri, as most other states, currently has a multitude of statutes protecting the privacy of juveniles. The juvenile courts, the Division of Family Services, the Division of Youth Services and the Department of Mental Health are all statutorily limited with regard to various aspects of confidentiality. At the same time, each of the forty-three (43) circuit courts operate off of local policies and procedures developed by the juvenile judge and circuit courts and each of the state agencies have promulgated regulations and policies to further detail the guidelines provided by law. Interestingly enough, however, even though all of these service delivery systems have juveniles as clientele, no two statutory provisions are identical. On the contrary, there are inconsistencies and gaps.

REVIEW PROCESS

The Review Committee has approached the issue of confidentiality and the role it plays in the juvenile service system in the State in the following ways:

- Reviewing the current statutes and regulations currently in operation in Missouri;
- Reviewing and assessing statutes from other states as well as model codes;
- Recognizing the problems within the current structure as perceived by both system personnel and other interest groups in the community;
- Attempting to synthesize the needs of Missouri with the approaches adopted by other states;
- Developing options that can be considered by those empowered to initiate both statutory and regulatory change with regard to the juvenile service agencies under consideration; and
- Attaching specific recommendations to the Option chosen by the Committee as being the most practical and viable at this time.

It is the Review Committee's opinion that there is a need for change with regard to a number of the current provisions relating to confidentiality. Based on an analysis of the materials mentioned above, the following summary of the Committee's recommendations is intended to provide the decision makers in the State with a new sense of direction regarding this issue.

RECOMMENDATIONS

The recommendations proposed by the MJJRC are based upon three philosophical assumptions. First, the Review Committee would suggest that there is a need for maximum consistency both within each of the juvenile service agencies as well as across

agency boundaries. Secondly, there is a need for maximum freedom for the exchange of information between the agencies in the field and access to certain information by the involved parties being impacted by the services. Thirdly, there is a need for maximum sanctions for those found to be in violation of the confidentiality provisions.

A. DEFINITIONS

In order to achieve consistency across professional lines in definitions as they relate to the issue of confidentiality, the Review Committee would recommend that definitions for the following be included in statute:

- Access
- Administrative Regulations
- Child Care Agency/Individual
- Confidentiality
- Destruction
- Disclosure
- Disposition of a Record
- Dispositional Findings
- Expunction
- Identifying Information
- Juvenile Service Agency
- Maintenance
- Privacy
- Record (Agency, Juvenile Court, Law Enforcement)
- Research
- Sanctions
- Sealing
- Subject of a Record
- Third Party Records

Further, the Review Committee has proposed definitions for each of the above terms.

B. SANCTIONS

The Committee recommends that, except as provided under sections relating to recommendations regarding the authorized access or release of information, any person who has authorized access to such information who discloses, makes use of, or permits the use of information concerning a juvenile who is or is suspected of being the subject of a referral, complaint, investigation, proceedings, or a legal, social or agency record of any juvenile service agency shall be guilty of a Class A misdemeanor and upon confirmation of the violation, may be subject to contempt action and/or administrative discipline up to and including dismissal. Any person affected by the violation may sue in a civil court for the actual damages incurred.

C. RESEARCH AND DATA COLLECTION

The Committee recommends that enabling and regulatory laws should provide researchers access to information regarding juveniles but should be consistent in stringency and application across juvenile service agency lines.

Regarding data collection for statistical purposes, the Committee recommends that a single body be given mandate and authority to collect statewide aggregates of data which will give accurate information as to the state of the juvenile service system in Missouri.

D. ACCESS TO RECORDS

In order both to protect the privacy of a juvenile and his or her family and also to facilitate the necessary sharing of information between individuals and agencies providing services to the subject, the Committee believes that there are individuals or agencies who should have consistent general access to records. There are other instances where, depending upon the agency, the nature of the record, or the person requesting information, there should be certain restrictions imposed.

1. Release Policy Applicable to All Juvenile Service Agencies. In instances where consistent access is recommended across agency lines, the following is recommended:

After the investigation of a referral, access to records and files of a juvenile service agency should be restricted to:

- a. The juvenile who is the subject of the record and his/her counsel.
- b. The parents, guardian, or primary caretaker of the juvenile who is the subject of the record and their counsel.
- c. The guardian ad litem of the juvenile named as subject of the record.
- d. Judges and appropriate staff of any juvenile court when essential to performing their responsibilities relative to the juvenile who is the subject of the record.
- e. A child caring agency or individual who is directed to take custody of or be responsible for providing treatment or services to the juvenile and/or family of the child who is named as subject of the record.
- f. Appellate courts when reviewing a case relative to a juvenile who is the subject of the record.
- g. Individuals for the express purpose of conducting research, evaluative or statistical studies. Identifying information should be deleted.
- h. Authorized clerical or administrative staff of the maintaining agency when essential for administrative purposes.
- i. Information may be released for other purposes upon the written authorization of a child and/or parent with review by the attorney and/or guardian ad litem.

Juvenile service agencies shall be required to develop administrative safeguards to insure that these recommendations are protected by both policy and procedure.

2. Release of Information to Specified Others. In instances where information and/or access should be limited, the following recommendations are made:

- a. Local School Districts: It is the Committee's recommendation that records released to schools should be shared with discretion and should be restricted to information which will serve to enhance the educational program of the juvenile.
- b. Child Abuse and Neglect Investigations: Information necessary to make a disposition on a report of child abuse and neglect should be shared freely between any agency personnel who are actively involved in the investigation of the specific instance of abuse or neglect. Sharing of the specific allegations of the report alone should be restricted to the following:
 - (1) The juvenile named as subject of the report and his/her counsel.
 - (2) The parents, guardian or primary caretaker and their counsel.
 - (3) Law enforcement agencies when necessary to carry out their responsibilities relative to the specific report.
 - (4) Judges, staff of the juvenile court, and prosecuting attorneys when essential to performing their responsibilities relative to the report.
 - (5) Physicians or appropriate medical staff.

- (6) An appropriate child caring agency or individual who has been directed to take custody of the juvenile named in the report or to provide services to the juvenile, parents, guardian or primary caretaker.

The specific allegations of the report should otherwise remain confidential when gaining or disclosing information necessary to make a disposition on a child abuse or neglect report.

- c. Dispositional Information: The Committee recommends that sharing of the disposition be restricted to the following situations:
 - (1) Disposition of a Report of Child Abuse or Neglect. It is appropriate to disclose information regarding the disposition of a report of child abuse or neglect to the mandated reporter upon the reporter's written request and verification of identification.
 - (2) Disposition of a Juvenile Cause. The Committee believes that it is appropriate for the court to disclose information regarding the disposition of a juvenile cause to the alleged victim and the involved law enforcement agency upon request and verification of identification.
 - (3) Release of Dispositional Information to Adult Correctional Facilities. It is appropriate for the juvenile court or the Division of Youth Services to disclose dispositional information to the Department of Corrections, the Division of Probation and Parole, and other adult correctional facilities. This information should be limited to that regarding a juvenile involved in a designated serious offense and within a certain time frame.
- d. Courts of General Jurisdiction Where the Juvenile is not the Subject of the Proceedings. It is the Committee's recommendation that records may be necessary for consideration in judicial proceedings involving the prosecution of an adult or in the determination of custody issues. However, the protection of the child is of utmost importance in the decision to release such information. Therefore, it is recommended that the legal record of a juvenile may be released in an adult proceeding when a party of that proceeding has served the record custodian with a properly executed subpoena duces tecum. The social record of an agency, or portions thereof, may be released only after the filing of a motion in the juvenile court, proper notice, hearing and order of court by the juvenile court judge specifying the reasons why the record is necessary.
- e. Others: The Committee recommends that in order to protect the privacy and best interest of a juvenile served by a juvenile service agency, no records should be disclosed to certain individuals, agencies, or institutions often seeking the same for a variety of purposes. These would include employers, potential employers, the military, any individual representing the media, any school or educational institution, licensing authorities, or credit agencies.

E. FINGERPRINTING/PHOTOGRAPHING

The following changes in procedures and safeguards regarding identifying and evidentiary information with reference to juveniles are suggested:

- 1. Fingerprints.** No recommendations for change are made at this time.
- 2. Photographs.**
 - a. Juvenile Court Delinquency Cases
 - (1) A juvenile in judicial custody shall only be photographed with the authorization of the court and then only for criminal identification purposes where necessary for a pending investigation, provided, however, that this restriction shall not apply to juveniles certified for prosecution as adults.

- (2) Upon use of the photographs for identification purposes, the following shall occur:
 - (a) If there is no identification, all copies of the photographs and negatives shall be forwarded to the juvenile court where they will be destroyed forthwith.
 - (b) If there is a positive identification, all copies of the photographs and negatives shall be forwarded to the court pending disposition of the case and thereafter retained in the juvenile's social file or in the juvenile's legal file if same are introduced as evidence during a court hearing.
- (3) Photographs of a juvenile shall only be retained by the juvenile court and shall not be sent to a central state or federal depository.
- (4) Photographs of juveniles being retained by the juvenile court may be inspected and used by law enforcement officials with the authorization of the court upon written request when necessary for the discharge of their official duties and when there is cause to believe that the juvenile has been involved in a subsequent offense.
- b. Juvenile Court Abuse Cases or Neglect Cases
 - (1) The juvenile judge may authorize the photographing of any juvenile taken into custody as a victim of abuse or neglect.
 - (2) Photographs of a juvenile victim of abuse or neglect authorized by the court are subject to inspection by the Division of Family Services personnel and law enforcement personnel when necessary for the discharge of their official duties.
 - (3) Photographs of a juvenile victim of abuse or neglect authorized by the court shall be retained in the juvenile's social file or in the juvenile's legal file if introduced as evidence during a juvenile court hearing.
- c. Division of Family Services Abuse Cases or Neglect Cases.
 - (1) Division of Family Services personnel, court personnel, medical personnel or law enforcement officials may photograph juveniles who come to their attention as victims of abuse or neglect without prior authorization of the juvenile court.
 - (2) Reproductions of photographs of abuse or neglect victims taken by medical or law enforcement personnel shall be forwarded to the Division of Family Services and retained in the agency records or in the legal records if introduced as evidence during a court hearing.
- d. Juvenile Service Agency Adoption and Foster Care Cases.
 - (1) The agency may authorize the photographing of juveniles in their legal custody without prior authorization of the court when such photographs will be used for recognized purposes to further the placement of children in adoptive homes.
 - (2) The agency may authorize the photographing of juveniles in their legal custody without prior authorization of the court when such photographs emerge in the normal daily activities of the child. Such activities may include, but not be limited to, school year book photographs, family photographs, and photographs where the child is being recognized for achievement.

F. DISPOSITION OF RECORDS

Each juvenile service agency needs to develop mechanisms whereby records are disposed of after the juvenile is no longer involved in the juvenile service system. In ac-

cordance with its findings, the Review Committee would recommend the following changes:

1. Juvenile Courts and Law Enforcement

The court shall, either on its own motion, or upon application by the child or his representative, or upon application of the juvenile officer, enter an order to destroy all social histories, records, and information, other than the official court legal record and law enforcement records, and may enter an order to seal the official court legal record and law enforcement records within one month after the child reaches his seventeenth birthday and three years have elapsed since the last proceeding relating to a serious violation (rape, sodomy, murder, kidnapping, robbery, arson, burglary, or any acts involving rendering or threat of serious bodily harm) unless jurisdiction of the court is extended beyond the child's seventeenth birthday. In the event jurisdiction has been extended, the court shall take such action within one month of the closing of the child's case and/or upon the child's twenty-first birthday if fewer than three years have elapsed since the last proceeding was disposed of by the court relating to a serious violation.

2. Division of Family Services

Regarding reports of child abuse or neglect in which no evidence of abuse or neglect is found by the Division, identifying information shall be retained for six months and then shall be removed from the records of the Division.

3. State Agencies.

The Divisions of Family Services and Youth Services maintaining any record pertaining to a child who entered the agency system at any age under seventeen will close that record upon termination of services. Such records will be maintained for five years of inactivity, and within one month after the five year period has elapsed such records will be destroyed (with the exception of the proposed section regarding Abuse/Neglect report records above).

G. UPON FINAL DISPOSITION OF RECORDS

It is the recommendation of the Committee that upon the destruction or sealing of any juvenile service agency records, the violation of the law and/or prior agency involvement be treated as though it never occurred. All personal identification references shall be deleted, and the court, law enforcement officers, and agencies shall reply and the subject of the record may reply to any inquiry that no record exists. The subject of the record may, however, authorize in writing the release of this information.

